

No. 9/5/84-6Lab/2589.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the Workmen and the management of M/s Frick India Ltd., Faridabad.

IN THE COURT OF SHRI R.N. SINGAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 51 of 1984

Between

SHRI JITU PARSHAD, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S FRICK INDIA LTD., FARIDABAD

Present—

Shri Manohar Lal for the workman.

Shri S.L. Gupta for the respondent management.

AWARD

This reference has been referred to this court by the Hon'ble Governor of Haryana—*vide* his order No. ID/FD/14/84/9161,-66 dated 2nd March, 1984, under Section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the industrial dispute existing between Shri Jitu Parshad Workman and the respondent management of M/s Frick India Ltd., Faridabad. The term of the reference was :—

Whether the termination of services of Shri Jitu Parshad was justified and in order? If not to what relief is he entitled ?

According to claim statement, the claimant was employed in the respondent factory for the last eight years. He proceeded on leave on 13th May, 1983 but he fell ill. He informed the management—*vide* registered letter dated 7th June, 1983. He did not recover his health. Hence he informed the management on 27th August, 1983 and on 19th September, 1983 he returned on duty but he was not allowed to join duty. Hence he was bound to file the demand notice.

It is admitted in the written statement that the claimant was appointed on 1st November, 1976. The claimant started absenting on 22nd June, 1983 without any intimation. A legal notice on 1st July, 1984 was sent to him through registered A.D. There was lock out in the factory from 10th July, 1983 to 6th August, 1983. The claimant did not appear even after the lock out was called off and a charge-sheet was given to. The workman sent registered letter on 27th August, 1983 containing medical certificate from the doctor. This document seems to be forged one and the date 23rd June, 1983 is scored off 11th July, 1983. Even in this certificate the claimant was advised rest upto 21st July, 1983. He did not join duty even after that. He did not send any application for leave. Hence the management,—*vide* letter dated 27th September, 1983 informed the claimant about the termination of his services. It is further alleged that the claimant is gainfully employed.

In the rejoinder it is alleged that he remained sick from 23rd May, 1983 to 18th September, 1983 and sent medical certificate. It is further alleged that the fictitious. He has claimed the benefit of continuity of service and full back wages.

The claim was contested on the following issues :—

(1) As per reference ?

(2) Whether the workman is gainfully employed ? If so to what its effect ?

I have heard the representative of both the parties and gone through the evidence on record. My findings on the issues are as under :—

Issue No. 2.—No arguments has been advanced by the representative of the management. Hence it is decided against the management.

Issue No. 1.—It is contended that the workman over stayed his sanctioned leave. Hence his services were terminated—*vide* Ex. M-8. It is admitted that the claimant remained on leave from 25th May, 1983 to 6th June, 1983. This leave was again extended from 6th June, 1983 to 21st June, 1983 and from 21st June, 1983 up to the date of dismissal no leave was sanctioned to him though he has send medical certificate in which he was advised rest upto 21st July, 1983. The workman did not send any medical certificate. It is, therefore clearly shows that the workman remained absent for more than 8 days. He did not send any application nor he send medical certificate. The rep. of the management has rule 19 of the Certified Standing orders of the management

which is Ex. M-12. According to this rule if the workman remained absent without sanction leave or whether it is granted or subsequently sanctioned he shall be deemed to have left service unless he reports within 10 days from the date of his absent without sanctioned leave and expiry of leave and explains to the satisfaction of the manager. His inability for un-authorised absence before the expiry of his leave. It is also alleged that under rule 27-(b)(i) the workman is deemed to leave the services of the management and it does amount to retrenchment. He has relied upon the judgement of our own high court in *Freewheel India Vs. State of Haryana*; 1984 L.I.C. NOC 82. In this judgement it is held that the standing orders have the force of law. The effect of Section 25-J that nothing contrary of the provisions of the Act shall be applicable has not been discussed. Moreover the judgement of our own High Court in *Pepsu Road Transport Corp. Vs. Presiding Officer, Labour Court, Patiala* 1981-2SLR Page 445 was not considered in the above said judgement. It has been held that loss of lien in term of Section 17(4) amounts to retrenchment attracting the provisions of Section 25-F. The Delhi High Court in its judgement in *Hamdard Dawakana Vs. Labour Court, Delhi* and another I.L.L.J. 1985 page 57 has also held that it is discretion of the management to take action against the workman under either of the two provisions of the standing order. There is no question of any enquiry or notice to be issued by the management to the workman. The management treated the case of the workman under Section 11(g) of the Certified Standing orders under which his lien on the appointment stood terminated automatically. In these judgements of the Hon'ble Supreme Court have been relied upon. The Patna High Court in *Deshraj Sood Vs. Industrial Tribunal and others*; 1985 I.L.L.J. page 74 has held that whether the termination is brought about by voluntary or involuntary action whether that is produced by over act or by operation of the provisions of Standing orders, the termination would be retrenched within the meaning of Section 2(oo) Termination without the Compliance of Section 25-F renders the termination void ab initio and inoperative. The petitioner shall be deemed to be in service and be entitled to arrears of salary. In this judgement number of judgements has discussed. Reliance has also placed on *Pepsu Road Transport Corp. Vs. Presiding Officer, Patiala*. The judgements of the Hon'ble Supreme Court have also been discussed wherein it is held that key words are termination any reason whatsoever. It is also held by the Hon'ble Supreme Court in *Delhi Cloth Mill Co. vs. Shambhu Nath* that the striking of name of the workman from the roll amounts to retrenchment within Section 2(oo) and require mandatory compliance of provisions of Section 25-a & b. In view of the judgement of Patna High Court and also of our own High Court in *Pepsu Road Transport* and in view of the judgement of Supreme Court as discussed by the Patna High Court, I find that the termination of services of the claimant amounts to retrenchment. In the present case the mandatory provisions of Section 25-F of the Industrial Disputes Act were not complied with. Hence the order of termination of services of the claimant was illegal and unjustified. I, therefore, give the award that he is entitled to reinstatement with continuity of service and with full back wages.

Dated the 16th March, 1985.

R.N. SINGAL,

Presiding Officer,
Labour Court, Faridabad.

Endstt. No. 858, dated 22nd March, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under Section 15 of the Industrial Disputes Act.

R.N. SINGAL,

Presiding Officer,
Labour Court, Faridabad.

No. 9/5/84-Lab./2793.—In pursuance of the provisions of section 17 of Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workmen and the management of M/s Ved Lakshmi Flour and General Mills Pvt Ltd, Bhiwani Road, Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 51 of 83.

Between

S/SHRI PHAL RAJ, RAMESH KUMAR, BHIM SHARMA, RANJIT SINGH, OM PARKASH, SATBIR SINGH, RANBIR SINGH, RAM KUMAR, DAYA NAND, JAI NARAYAN and PRITHVI RAJ WORKMEN AND THE MANAGEMENT OF M/S. VED LAKSHMI FLOUR AND GENERAL MILLS PVT. LTD., BHIWANI ROAD, ROHTAK.

Shri S. N. Vats, A. R. for the workmen.

Shri M. M. Kaushal, A. R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between the workmen S/Shri Phal Raj, Ramesh Kumar, Bhim Sharma, Ranjit Singh, Om Parkash, Satbir Singh, Ranbir Singh, Ram Kumar, Daya Nand, Jai Narayan and Prithvi Raj and the management of M/s. Ved Lakshmi Flour and General Mills Pvt. Ltd., Bhiwani Road, Rohtak to this Court, for adjudication,—vide Labour Department Gazette: Notifications No. ID/21650—55, 21636—41/ID/21634—43, ID/21657—62, 21664—69, ID/21671—76, ID/21678—83, ID/21685—90, ID/21692—97, ID/21698—704, ID/21706—11 all of dated, 9th May, 1983:—

Whether the termination of services of Shri Phal Raj, Ramesh Kumar, Bhim Sharma, Ranjit Singh, Om Parkash, Satbir Singh, Ranbir Singh, Ram Kumar, Daya Nand, Jai Narayan and Prithvi Raj was justified and in order? If not, to what relief are they entitled?

2. Since common questions of law and facts were involved in reference number 49 to 59 all of 1983, so, these were ordered to be consolidated,—vide my order dated, 21st November, 1984 and 4th February, 1985. I, further directed that the proceedings shall be recorded in reference No. 51 of 83.

3. After receipt of the order of references, notices were issued to the parties. The parties appeared. The common case of the workmen in all these references is that they were employed by the respondent between the year 1976 to 1980 and their services were unlawfully retrenched by the respondent on 19th April, 1982, though workers junior to them, namely S/Shri Tilak Raj, Raj Pal, Sewa Singh, Ghanshyam, Gian Singh, Bechain, Ram Naresh, Manohar, Krishan Lal, Om Parkash, Maman and Rajinder etc. were retained in employment and as such, the respondent contravened section 25G and 25H of the Industrial Disputes Act, 1947. So, they have all claimed reinstatement with continuity of service and full back wages. The refrain of all the replies filed by the respondent is that the workmen were never employed by the respondent and as such, there is no relationship of employer and employee between the parties, because the respondent concern was leased out firstly to M/s. Bhawani Trading Company and subsequently to M/s. Vrindanvan Milling Company and these lessees have cleared all the accounts of the workmen in accordance with the law when the release period expired on 19th April, 1982 and that the respondent took over the control of the factory only on 20th April, 1982. He further alleged that the lessees had assured the respondent that the dues have been paid to all the workmen engaged by them as per seniority in law. The preliminary objections taken are that no retrenchment was ever effected by the respondent on 19th April, 1982 and in the alternative, it is pleaded that the matter of retrenchment is beyond the jurisdictional competency of this Court and as such the reference is bad in law. Additional plea projected was that the applicant remained gainfully employed after his alleged retrenchment.

4. On the pleadings of the parties, the following issues were settled for decision by me on 30th July, 1984:—

1. Whether the applicant is a workman under the respondent?
2. Whether this Court has no jurisdiction to try this reference?
3. Whether the applicant is gainfully employed since he left the services of the respondent?
4. Whether the termination of services of S/Shri Phal Raj, Ramesh Kumar, Bhim Sharma, Ranjit Singh, Om Parkash, Satbir Singh, Ranbir Singh, Ram Kumar, Daya Nand, Jai Naryan and Prithvi Raj was justified and in order? If not, to what relief are they entitled?

5. After the parties had gone through the gamut of adducing evidence and the case was fixed for arguments, the learned Authorised Representative of the workmen Shri S. N. Vats frankly conceded that since the matter of retrenchment is within the jurisdictional competency of the Industrial Tribunal as provided in 3rd schedule appended in section 7-A and so, these references are not maintainable in this Court. Such a plea was taken by the respondent in the reply filed and was vehemently pressed at the bar on behalf of the respondent. I, also feel that these references have been wrongly made to this Court by the Government of Haryana, which, according to law, should have been referred to the Industrial Tribunal, Faridabad. So, these references are not maintainable in this Court. So, the same are answered and returned accordingly. There is no order as to cost. A copy of this award be placed upon the file of references numbers 49 to 50 and 52 to 59 all of 1983.

Dated : 21st March, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst No. 51/83/536 dated, 29th March, 1985.

Forwarded (four copies), to the Secretary to Government, Haryana, Labour & Employment Departments Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.